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**Objection Deadline: January 31, 2019 at 4:00 p.m.**

*Attorney for 5330 Crosswind, LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	<b>: Chapter 11</b>
	<b>: </b>
<b>SEARS HOLDING CORPORATION, <i>et al.</i>,</b>	<b>: Case No. 18-23538 (RDD)</b>
	<b>: </b>
<b>Debtors.<sup>1</sup></b>	<b>: Jointly Administered</b>
	<b>: </b>
-----X	

**LIMITED OBJECTION OF 5330 CROSSWIND, LLC TO SUPPLEMENTAL CURE  
NOTICE AND RESERVATION OF RIGHTS**

5330 Crosswind, LLC (“Crosswind”) submits the following limited objection and reservation of rights (the “Objection”) to the Debtors’ Supplemental Notice of Cure Costs and

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<sup>1</sup> The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction, filed January 23, 2019 (Doc. 1774, the “Supplement”):

1. Crosswind leases three parcels of real property located in Columbus, Ohio to Debtor Innovel Solutions, Inc. (“Innovel”) pursuant to a Warehouse Lease dated October 25, 1988, as amended, originally between Leadership Southwest, Inc., Crosswind’s predecessor-in-interest, and Sears, Roebuck, and Co., Innovel’s predecessor-in-interest (the “Lease”). The Lease is for 1,014,513 square feet of warehouse space. The Lease is not attached because it contains sensitive information and Debtors already have a copy.

2. The Supplement indicates that the Debtors may seek to assume and assign the Lease in connection with their proposed asset sale. The Supplement, however, does not list a cure amount for the Lease. *See* Exhibit B-1 to the Supplement at Line 381. Crosswind does not object to the assumption and assignment of the Lease, provided that the Debtors and the assignee satisfy the requirements for same under the Bankruptcy Code.

3. In order to assume and assign the Lease, the Debtors must cure or provide adequate assurance of prompt cure of any default. 11 U.S.C. § 365(b)(1)(A). Further, the Debtors must provide adequate assurance of future performance of the remaining obligations under the Lease. 11 U.S.C. § 365(b)(1)(C). The Debtors’ proposed assumption and assignment fails these requirements in four respects. A chart summarizing the following items is attached hereto as Exhibit 1.

4. First, the Lease requires Innovel to make monthly base rent payments to Crosswind. As of the filing of this Objection, Innovel is current on base rent through January 2019. The Debtors will not, however, assume and assign the Lease until February 2019 at the soonest. Crosswind hereby reserves the right to include any amount of base rent that becomes due and is not timely paid in the proposed cure amount.

5. Second, the Lease requires Innovel to pay ongoing real estate taxes for the property as they become due. Property taxes in Ohio are paid in arrears. The taxes for the first half of calendar year 2018 are now due and payable, and the taxes for the second half of 2018 will be due in June 2019.

6. Debtors have indicated that they paid real estate taxes for the first half of 2018 totaling \$344,667.16 for two parcels. That payment is not yet reflected in the county auditor's public record. In the event that payment was not made, the proposed cure amount should include this sum, plus any interest and penalties. In addition, Crosswind paid real estate taxes in the amount of \$5,892.43 on the third parcel for the first half of 2018. Pursuant to the terms of the Lease, Innovel is obligated to reimburse Crosswind for this payment. The proposed cure amount should include the \$5,892.43.

7. As noted above, real estate taxes for the second half of 2018 will become due in June 2019. Crosswind is entitled to receive adequate assurance that future real estate taxes will be paid.

8. Third, pursuant to the terms of the Lease, Innovel must pay certain ongoing expenses related to the property (the "CAM Expenses"). Specifically, the Lease requires Innovel to pay, on a monthly basis, 1/12<sup>th</sup> of the total estimated CAM Expenses for the current calendar year, subject to true up at the end of the year. Innovel is currently in default of its obligations for calendar years 2018 and 2019.

9. Innovel owes actual CAM Expenses for July through December 2018 totaling \$95,745.48. These amounts have not been paid and should be included in any cure amount.

10. The estimated CAM Expenses for calendar year 2019 are \$18,977.40 per month. Innovel is currently in default of its obligation to pay the January 2019 estimated CAM Expense. The proposed cure amount should include these sums, along with any sums that may become due

before the Lease is assumed and assigned. Further, Crosswind is entitled to receive adequate assurance that future estimated CAM Expenses will be timely paid.

11. Finally, Crosswind has incurred significant attorneys' fees in connection with protecting its interests in these cases. Attorneys' fees and costs incurred in enforcement of the obligations of a lease are also proper components of a cure claim. *See In re Entertainment, Inc.*, 223 B.R. 141, 152 (Bankr. N. D. Ill. 1998). *See also Urban Retail Properties v. Loews Cineplex Entertainment Corp.*, 2002 WL 5355479 (S.D.N.Y. Apr. 9, 2002); *In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 756-57 (Bankr. S.D.N.Y. 1986). The Supreme Court has upheld the enforceability of attorneys' fees clauses, ruling that pre-petition attorneys' fees clauses were enforceable with respect to issues peculiar to bankruptcy law. *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric*, 127 S. Ct. 1199, 1206 (2007). The proposed cure amount should include all such fees, in an amount to be determined at the time of the actual assumption and assignment.

12. Debtors have provided Crosswind with cursory information to establish assurance that the assignee will have the financial ability to perform the terms of the Lease. Crosswind has requested additional information, and reserves its right to review any such information concerning the adequate assurance of future performance of any amounts that become due after the assumption and assignment of the Lease.

WHEREFORE, Crosswind respectfully submits this limited objection to the proposed cure amount in the Supplement and reserves its rights to include additional sums in the cure amount as they become known and to receive appropriate adequate assurance of future performance.

Dated: January 31, 2019

Respectfully submitted,

ICE MILLER LLP

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*Counsel for 5330 Crosswind, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 31, 2019, a true and correct copy of the foregoing *Limited Objection of 5330 Crosswind, LLC to Supplemental Cure Notice and Reservation of Rights* was filed with the Court's CM/ECF system and served on all parties registered to receive such service, and was served on the parties listed below as indicated:

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